

REMARKS

Claims 1-28 are now pending in the application. Claims 1-28 are rejected. The Examiner is respectfully requested to reconsider and withdraw the rejection(s) in view of the amendments and remarks contained herein.

REJECTION UNDER 35 U.S.C. § 103

Claims 1-28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Collins et al. (U.S. Pat. No. 6,553,418) in view of Fowler et al. (U.S. Pat. No 6,714,977). This rejection is respectfully traversed.

Applicant respectfully asserts that the Examiner has failed to clearly and particularly support his alleged motivation to combine these references using actual evidence as required. According to established mandates of the patent laws, “[t]o establish a prima facie case of obviousness . . . there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.” **M.P.E.P. § 2142**. “There are three possible sources for a motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art.” **M.P.E.P. § 2143.01**.

“The motivation, suggestion or teaching may come explicitly from statements in the prior art, the knowledge of one of ordinary skill in the art, or, in some cases the nature of the problem to be solved.” *In re Kotzab*, 217 F.3d 1365, 1370, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000). The showing must be “clear and particular, and it must be supported by **actual evidence**.” *Teleflex, Inc. v. Ficosa North American Corp.*, 299

F.3d 1313, 1334, 63 U.S.P.Q.2d 1374, 1387 (Fed. Cir. 2002) (quoting *In re Dembiczak*, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999)) (emphasis added). It is not sufficient to rely on “common sense and common knowledge,” as there must be specific evidence to support the motivation. *In re Lee*, 277 F.3d. 1338, 1344-45, 61 U.S.P.Q.2d 1430, 1434-35 (Fed. Cir. 2002)].

Referring to claim 1, Collins et al. is completely silent with regards to including a user interface manager capable of accessing a data storage system and being operative to provide an executable applet to a remote browser application, the applet generating a user interface within the browser application for monitoring and adjusting settings and thresholds of at least one of one or more rectifier subsystems, one or more reserve power subsystems, and/or one or more power distribution subsystems, as required by the claims. More specifically, as admitted by the Examiner, “Collins et al. fails to disclose, explicitly, the use of an executable applet to carry of the functions of the present invention including adjusting settings and thresholds of at least one of said subsystems.” See, Office Action, paragraph 3.

Collins et al. merely states “a need exist for an energy information and control system that allows the facility management personnel to monitor multiple remote facilities ...Likewise, a need also exists for a utility provider to have accurate and real-time information across multiple consumers” (col. 1, lines 46-51).

No mention, suggestion, or motivation is provided by Collins et al. that necessitates the combination of Fowler et al. Similarly, Fowler et al. make no mention or evidences a motivation to combine or modify the teachings of Collins et al. Fowler et al. disclose a system including sensors that detect physical parameters associated with

a room such as a network room and/or devices in the room such as network servers (Abstract). The sensors are programmed to monitor the physical parameters such as temperature and to generate alarm signals when any of the physical parameters are outside of an allowable range. The sensors may also store physical parameters that are collected over a time period in memory (Abstract). Remote users may utilize a network-based interface to view current or past physical parameters and to adjust allowable ranges for the physical parameters.

Fowler et al. does not suggest or provide any motivation to incorporate the use of an executable applet for adjusting or setting thresholds within the energy information and control system of Collins et al. Therefore, it is respectfully submitted that the Patent Office has not made a legally sufficient showing of a motivation to combine based on actual, specific, evidence.

Rather, according to M.P.E.P. § 2142, “[t]o reach a proper determination under 35 U.S.C. 103, . . . impermissible hindsight must be avoided and the legal conclusion [of obviousness] must be reached on the basis of the facts gleaned from the prior art.” Furthermore, according to M.P.E.P. § 2143.01, “[t]he mere fact that references can be . . . modified does not render the resultant combination obvious unless the prior art also suggests the desirability of [such modification].” **In re Mills**, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990). Since the Patent Office has offered no proper support or motivation for combining the references, it is respectfully submitted that the rejection based on obviousness is clearly and unequivocally founded upon “knowledge gleaned only from applicant's disclosure.” **M.P.E.P. § 2145**. Consequently, it is respectfully submitted that the rejection entails hindsight and is, therefore, improper.

Claims 12 and 23 are allowable for at least similar reasons as claim 1. Thus, reconsideration and withdrawal of the rejections of claims 12 and 23 is respectfully requested.

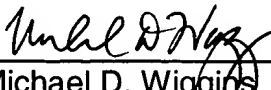
Claims 2 – 11, 13 – 22, and 24 – 28 each ultimately depend of claims 1, 12, and 23 respectively and are therefore allowable for the same reasons.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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